SALES — IMPLIED WARRANTIES — WHOLESOMENESS OF FOOD FOR ANIMALS. — In an action to recover the price of food for animals, the defendant pleaded by way of recoupment that the food was decayed and unwholesome for animals. *Held*, that the plea is bad. *Dulaney* v. *Jones*, 57 So. 225 (Miss.).

Ordinarily the implied warranty of soundness of food applies only when it is intended for human consumption. *Lukens* v. *Freiund*, 27 Kan. 664. But see *Houston Cotton Oil Co.* v. *Trammell*, 72 S. W. 244, 247 (Tex.). This accords with the statute of 51 Hen. 3, from which the doctrine arose. See *Burnby* v. *Bollett*, 16 M. & W. 644, 653 *et seq.* The rule rests upon the public policy to preserve health. See *Hoover* v. *Peters*, 18 Mich. 51, 55. Recovery upon an implied warranty of fitness might be allowed in some states if the seller knew the use to which the goods were to be put. *Preist* v. *Last*, [1903] 2 K. B. 148; *Houston Cotton Oil Co.* v. *Trammell*, *supra*; MASS. ACTS AND RESOLVES OF 1908, c. 237, § 15. However, in Mississippi the older common-law rule seems still to prevail and there is no warranty if the goods are specified. See *Otto* v. *Alderson*, 18 Miss. 476. *Cf. National Cotton Oil Co.* v. *Young*, 74 Ark. 144, 85 S. W. 92.

SALES — RIGHTS AND REMEDIES OF SELLER — MEASURE OF DAMAGES FOR REFUSAL OF BUYER TO ACCEPT STOCK. — The defendant contracted to repurchase stock from the plaintiff at par if it should discharge the plaintiff from its employment. The defendant discharged the plaintiff and refused to take the stock. *Held*, that the plaintiff can recover the par value of the stock. *Strait* v. *Northwestern Steel & Iron Works*, 134 N. W. 387 (Wis.).

The decision rests mainly upon two Massachusetts cases of executory contracts for the sale of stock. *Thorndike* v. *Locke*, 98 Mass. 340; *Pearson* v. *Mason*, 120 Mass. 53. It is interesting to notice that the case upon which these are rested is one of an executed contract in which title had passed, and which expressly repudiates such a result where title has not passed. *Thompson* v. *Alger*, 53 Mass. 428. There is in some jurisdictions an established doctrine that the seller of personalty may have, even at law, this remedy, which amounts to specific performance. *Dustan* v. *McAndrew*, 44 N. Y. 72; *Osgood* v. *Skinner*, 111 Ill. App. 606. And, consistently enough, a court has even ordered that the seller keep the stock until the judgment is satisfied. *Finlayson* v. *Wiman*, 84 Hun (N. Y.) 357, 32 N. Y. Supp. 347. Several jurisdictions allow this specific performance only where the goods are of a variety not readily salable and to which, therefore, a market price cannot readily be fixed. See WILLISTON, SALES, § 564. And some cases seem to rely upon the fact that a specified block of stock is meant. *Pittsburgh Hardware & Home Supply Co.* v. *Brown*, 174 Fed. 981; *Reynolds* v. *Callender*, 19 Pa. Super. Ct. 610. Others, however, allow it as a matter of course, apparently ignoring any limitation of the rule. *Osgood* v. *Skinner*, *supra*; *Finlayson* v. *Wiman*, *supra*.

TAXATION — EXEMPTIONS — PROPERTY USED EXCLUSIVELY FOR CHARITABLE PURPOSES. — A fraternal order owned a clubhouse open only to members. In one part of the clubhouse meals and drinks were sold, and the net proceeds devoted to charitable work among the members and the public at large. The state constitution provided that "property used exclusively for . . . charitable purposes . . . shall be exempt from taxation." *Held*, that the clubhouse is exempt. *Salt Lake Lodge* v. *Groesbeck*, 120 Pac. 192 (Utah).

For purposes of exemption from taxation fraternal orders are generally regarded as charities. *Plattsmouth Lodge* v. *Cass County*, 79 Neb. 463, 113 N. W. 167; *Hibernian Benevolent Society* v. *Kelly*, 28 Or. 173, 42 Pac. 3. *Contra*, *City of Bangor* v. *Rising Sun Lodge*, 73 Me. 428. But where only "purely public charities" are exempt, fraternal orders which confine their benefactions to their own members are taxable. *Philadelphia* v. *Masonic Home*, 160 Pa. St.

572, 28 Atl. 954; *Morning Star Lodge* v. *Hayslip*, 23 Oh. St. 144. And societies whose chief purpose is mutual benefit or mutual insurance are not regarded as charities. *Young Men's Protestant, etc. Society* v. *City of Fall River*, 160 Mass. 409, 36 N. E. 57; *Supreme Lodge* v. *Board of Review of Effingham County*, 223 Ill. 54, 79 N. E. 23. But conceding that the fraternal order in the principal case is a charity, its property is not exempt from taxation unless it be "used exclusively for charitable purposes." If part of a building is rented for business uses, that part is taxable even though the profits are devoted to charity. *City of Indianapolis* v. *Grand Master*, 25 Ind. 518; *Massenbury* v. *Grand Lodge*, 81 Ga. 212, 7 S. E. 636. Nor is a building exempt if the charity itself uses it for profit. *American Sunday School Union* v. *City of Philadelphia*, 161 Pa. St. 307, 29 Atl. 26; *Sisters of Peace* v. *Westervelt*, 64 N. J. L. 510, 45 Atl. 788. On the other hand, the fact that some income is derived from the use of the property does not render it taxable, if the use be a mere incident of the charitable purpose for which it is maintained. *House of Refuge* v. *Smith*, 140 Pa. St. 387, 21 Atl. 353; *Franklin Square House* v. *City of Boston*, 188 Mass. 409, 74 N. E. 675. But it would seem that the use in the principal case does not fall into this latter category. *Cf. Trustees of Green Bay Lodge* v. *City of Green Bay*, 122 Wis. 452, 100 N. W. 837; *Lacy* v. *Davis*, 112 Ia. 106, 83 N. W. 784.

TAXATION — PROPERTY SUBJECT TO TAXATION — TAXATION OF FOREIGN CORPORATIONS ENGAGED IN INTERSTATE COMMERCE. — Under a constitutional provision, a Minnesota statute assessed on an express company, organized in New York and engaged in interstate commerce, "a tax of six per cent upon its gross receipts for business done between points within this state, in lieu of all taxes upon its property." *Held*, that this is not void as a regulation of interstate commerce. *United States Express Co.* v. *State of Minnesota*, U. S. Sup. Ct., Feb. 19, 1912.

An Oklahoma statute assessed on a non-resident express company engaged in interstate commerce a tax of three per cent on such proportion of its gross receipts, "from every source whatsoever," as the portion of its business done within the state bore to the whole of its business, "in addition to the taxes levied and collected upon an *ad valorem* basis upon the property and assets of such corporation." *Held*, that the tax is void as a regulation of interstate commerce. *Meyer* v. *Wells Fargo & Co.*, 32 Sup. Ct. 218.

The above two cases strikingly illustrate the theory of the United States Supreme Court in cases of this sort. For a discussion of the principles involved, see 25 HARV. L. REV. 95.

TRUSTS — CREATION AND VALIDITY — VOLUNTARY DECLARATION OF TRUST IN LAND WITHOUT TRANSMUTATION OF POSSESSION. — The defendant, being owner of land, made a voluntary written declaration of trust of it in favor of another. *Held*, that this creates an enforceable trust. *Schumacher* v. *Dolan*, 134 N. W. 624 (Ia.).

In 1811 Lord Eldon, apparently without regarding the previous law, enforced a voluntary declaration of trust of a chose in action. *Ex parte Pye*, 18 Ves. Jr. 140. This case was long regarded as anomalous. See *Scales* v. *Maude*, 6 De G. M. & G. 43, 51; *Jones* v. *Lock*, L. R. 1 Ch. 25, 28; 9 HARV. L. REV. 213. But on its facts it is fairly defensible. A chose in action is in general incapable of delivery, and a voluntary assignment of a chose in action was not enforceable in equity, so that by this means alone could there be a valid gift of a chose in action. See *Bond* v. *Bunting*, 78 Pa. St. 210, 213, 218. The doctrine was soon extended, however, to voluntary declarations of trust in tangible property. *Thorpe* v. *Owen*, 5 Beav. 224. And the text-books with uniformity make no distinction between lands and personalty. See LEWIN, TRUSTS, 12 ed., 71, 72; 1 PERRY, TRUSTS AND TRUSTEES, 6 ed., § 96; 3 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 997. But no English case has been found applying this doctrine to freeholds. *Con-*